

**RIO DELL CITY COUNCIL  
SPECIAL MEETING  
JANUARY 29, 2009  
MINUTES**

A Special Meeting of the Rio Dell City Council was called to order at 9:15 A.M. by Mayor Woodall.

ROLL CALL: Present: Mayor Woodall, Councilmembers Barsanti, Marks and Thompson

Absent: Councilmember Dunker

Others Present: City Manager Flemming, Chief of Police Hill, Finance Director Beauchaine, Acting Director of Public Works Jensen, and City Clerk Dunham

**SPECIAL MEETING MATTERS**

A Resolution to Clarify the Procedures in the Whistleblower Policy for Reporting and Investigating Complaints

City Manager Flemming stated this was a continuation of the special meeting held on January 27, 2009 regarding the proposed revisions to the Whistleblower Policy as recommended by the attorneys and said as part of the meeting they would be engaging in a conference call with the labor attorneys the City has been consulting with.

Councilmember Thompson began the discussion by stating that as he stated in the prior meeting, he was opposed to changing the approved whistleblower resolution. He further stated that he had reviewed the ordinances and resolutions of several cities the approximate size of Rio Dell and none of them have anything dealing with a whistleblower policy. Because the auditor's have recommended the City implement such a policy and have approved the language in the resolution felt it should not be amended. He said the matter has come to this point because of the refusal of the City Manager to exercise her powers and duty (responsibility) granted her by the City Council/State and Federal Government. He stated it is also the responsibility of the account supervisor to maintain an honest and factual department and to pursue rumors of misuse of city property. He noted in all accounting departments he is sure there are people investigating flagged expenditures or activity of all levels of City officials and they never know about it. He said the City Council has known of some of the stated charges for over two years yet did not take appropriate action under their responsibility to the citizens of Rio Dell by ordering the City Manager to investigate the rumors and report back to the council in a timely manner. He closed by stating that the City Manager already has all the powers and direction necessary for her to do her job under ordinance 242-2002. For that reason he is opposed to making any changes to the

**JANUARY 29, 2009 MINUTES**

**Page 2**

approved resolution and believes the Council should place this matter in the hands of the city attorney.

The meeting continued with a conference call to the labor attorney. Councilmembers were given the opportunity to ask questions in regard to clarification of the procedures within the whistleblower policy.

Councilmember Marks said she was pleased to read the recommendation that the City Council will receive reports in regard to determinations of complaints under the whistleblower policy and asked if a time should be identified and asked if it would be a matter of public record ; the attorney stated that general reporting is a good idea and said the Council can direct the City Manager to submit an annual report on the extent that the whistleblower policy has been utilized stating the nature of the complaint. She noted it would be subject to public review.

Councilmember Marks stated in the event an employee feels intimidated, the City Council member should have the ability to write up a complaint on the employee's behalf; the attorney said it is always a good idea to have multiple avenues to make a person feel safe and building in protection for the employee is a good idea.

The attorney said she was hesitant to recommend a provision for anonymous complaints because you could get an overwhelming number of unfounded complaints although as elected officials, the council does have a sense of responsibility to their constituents. She said it is however a different situation with employees whereas it is very important to route the complaint through the city's procedures and policies. One thing to keep in mind is that the city will not be asked to hire or fire a citizen as with an employee.

It was noted that some types of complaints cannot be anonymous such as sexual assault complaints; Finance Director Beauchaine suggested language be added to say that complaints will be kept confidential within the law.

Discussion continued regarding handling potential complaints against the City Manager. The attorney pointed out that the one time that the City Council deals with personnel matters is in regard to the City Manager. Since he/she answers to them it is the one time it is appropriate and necessary.

Councilmember Thompson stated in the course of moving throughout the issues that need to be addressed how does the city move forward to correct the misconduct; the attorney explained there are many ways to learn of misconduct in the workplace and not just through the whistleblower policy. She said one way is through direct observation and if a policy is being violated the council can direct the City Manager to review the circumstances or engage in the auditor to do a review. If the complaint involves potential litigation, post on the closed session

agenda as such and make sure the attorney is present at the meeting or at the very least by phone during the meeting.

Finance Director Beauchaine stated that the recommendation from the auditors came as a result of several concerns and part of their recommendation was that there be a direct line of communication between the supervisor, city manager and city council and asked if it was illegal to include the city council. The attorney explained that having the city council included muddles the process although it is not illegal. She felt the best approach is to not include the city council in the process except for incidents involving the city manager. She also noted that if a complaint was given to the city manager and you felt it was not properly investigated then you could bring up a complaint against the city manager. She felt the chain of command should include the supervisor, city manager then city attorney.

Clarification /Review of the Brown Act

Discussion continued to questions and concerns in regard to the Brown Act.

Councilmember Marks asked what constitutes an illegal serial meeting; the attorney explained that it includes any time that a quorum (3 or more council members) discuss any city business whether it be in a room together or through e-mail conversations or over the telephone. One exception would be informational communication such as the city manager sending a memo to all members with general information.

Mayor Woodall asked if the council inadvertently break a provision of the Brown Act, can it be corrected; the attorney explained that some things can be corrected and some cannot and could be criminal offenses.

Councilmember Marks asked if the council were to vote in closed session to hire an attorney to investigate a workers' comp claim, does the action need to be announced in open session; the attorney explained at this point there is no pending litigation therefore the council could approve entering into a contract for services under the consent calendar.

Finance Director Beauchaine stated as managers they get a lot of information reported to them and have to make decisions on how to proceed and asked if there are guidelines on how to approach what appears to be gossip. The attorney stated that generally complaints are formal or informal and three rules to consider are 1) are policies and procedures being adhered to; 2) will this situation create an unsafe workplace; and 3) will the situation create potential litigation.

In closing, the attorney stated that the city's policy should strongly encourage employees to come forward and tell another person who is acting inappropriately that they don't like it and want the behavior to stop. Also it is very important that the complainant receive some sort of reply as to the determination of the misconduct of another employee and if the complaint is unfounded, simply state that no disciplinary action was taken.

**JANUARY 29, 2009 MINUTES**  
**Page 4**

City Manager Flemming stated that staff would be coming back to the council with the amended whistleblower policy for approval.

**ADJOURNMENT**

There being no further business to discuss, the meeting adjourned at 11:02 A.M. to the February 3, 2009 regular meeting.

Attest:

\_\_\_\_\_  
Julie Woodall, Mayor

\_\_\_\_\_  
Karen Dunham, City Clerk